

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA,

4 vs.

Criminal No. 18-55

5 EMMETT FRESHCORN,
6 Defendant.

7 Transcript of Detention Proceedings on Tuesday, April 3,
8 2018, United States District Court, Pittsburgh, Pennsylvania,
9 before Lisa Pupo Lenihan, District Magistrate Judge.

10 APPEARANCES:

11 For the Government:

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14 For the Defendant:

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24 Proceedings recorded by mechanical stenography; transcript
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1 (Proceedings held in open court; Tuesday, April 4, 2018.)

2 THE COURT: We're here in the matter of the United
3 States of America versus Emmett Freshcorn, case No. 18-55.

4 The government has filed a request for detention.

5 Mr. Lanni, if you're ready to proceed.

6 MR. LANNI: Yes, Your Honor.

7 At this time the United States would call Bureau of
8 Alcohol, Tobacco, Firearms and Explosives Special Agent
9 William Isbir.

10 Your Honor, I also have a copy of the Rule 16 receipt
11 here. May I approach, Your Honor?

12 THE COURT: You may.

13 MR. DeRISO: May I approach with the arraignment plea,
14 Judge?

15 THE COURT: Sure.

16 Now that that's all taken care of, Agent, if you want
17 to step forward and state and spell your name, please.

18 THE WITNESS: William Isbir, I-S-B-I-R.

19 WILLIAM ISBIR, a witness having been duly sworn, testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. LANNI:

23 Q. Special Agent Isbir, can you tell us by whom you're
24 employed?

25 A. I'm employed by the Bureau of Alcohol, Tobacco, Firearms

1 and Explosives.

2 Q. Did you start an investigation into possible suspicious
3 purchases of firearms?

4 A. Yes, we did.

5 Q. Approximately when did that start?

6 A. Approximately started in November of 2017.

7 Q. How were you alerted to these purchases of firearms?

8 A. We received a tip from our Crime Gun Intelligence Center
9 stating that a Heather Wolf had purchased roughly five
10 firearms, approximately accounting for 70 percent of her
11 third-quarter earnings during that time frame. She does not
12 have a concealed weapons to carry permit as well.

13 Q. Now, because of that, there were certain irregularities
14 and that's why that might have been flagged, correct?

15 A. Correct.

16 Q. Did you do any follow-up investigation in regards to those
17 purchases?

18 A. Yes, we did.

19 Q. What did you do?

20 A. My partner, Bob Mensa, and I approached Sportsmen
21 Outfitters, a local FFL in Knox, Pennsylvania. We requested
22 the 4473 form, an ATF form, and also we requested the sales
23 receipt for the purchase made from the firearms that Ms. Wolf
24 purchased.

25 Q. Now, first, the 4473 forms, those are a standard ATF form

1 that must be filled out any time an FFL conducts a gun
2 purchase, correct?

3 A. That is correct.

4 Q. Now, who filled out the 4473 forms for these five weapons?

5 A. Ms. Wolf.

6 Q. Now, you also said that you had an opportunity to get the
7 sales receipt from the purchase of these weapons, correct?

8 A. That is correct.

9 Q. This was from Sportsmen Outfitters?

10 A. Correct.

11 Q. Who is the sales receipt made out to and signed by?

12 A. Mr. Emmett Freshcorn.

13 MR. LANNI: May approach the witness?

14 THE COURT: You may.

15 BY MR. LANNI:

16 Q. I'm going to show you what is previously marked as
17 Government's Exhibit 1.

18 Do you recognize what Government's Exhibit 1 is?

19 A. Yes.

20 Q. What is that?

21 A. That's the sales receipt from Sportsmen Outfitters.

22 Q. There's a signature on there, correct?

23 A. Correct.

24 Q. Then there's actually a typed out name underneath it.

25 What does it say?

1 A. It says Emmett Freshcorn.

2 Q. How much was this purchased for?

3 A. \$5,530.59.

4 MR. LANNI: Your Honor, I ask that Government's
5 Exhibit 1 that has previously been marked be admitted into
6 evidence.

7 THE COURT: Do you have that?

8 MR. DeRISO: I've seen it. No objection, Judge.

9 THE COURT: Exhibit 1 is admitted.

10 BY MR. LANNI:

11 Q. Now, for those purchases, what type of weapons were
12 actually bought by Ms. Wolf?

13 A. During the time of that purchase, five handgun firearms
14 were purchased.

15 Q. What style were those handguns?

16 A. Various styles, a .22 caliber Ruger, two 5.56 caliber
17 pistols, which are larger ammunition style pistols, and two
18 other handguns, I believe a .40 caliber.

19 Q. Was there anything like an AR type pistol purchased in
20 this?

21 A. Those would be the AR style pistols, the 5.56 calibers.

22 Q. Could you explain what an AR style pistol is?

23 A. It's a smaller version of an AR style rifle with the stock
24 or the rear of the weapon modified so that it fits either over
25 the forearm or in the palm of the hand and it still fires the

1 same round as the AR style rifle.

2 Q. The AR style rifle would be termed as a high velocity
3 rifle, correct?

4 A. Correct.

5 Q. An AR style pistol can be strapped to the arm and used in
6 the same way?

7 A. Correct.

8 Q. Now, after you learned this information, you actually went
9 to Sportsmen Outfitters, correct?

10 A. Correct.

11 Q. This is when you received the 4473 and that sales receipt
12 which has been marked as Government's Exhibit 1, correct?

13 A. Correct.

14 Q. What other investigation did you do at Sportsmen
15 Outfitters in regard to that purchase?

16 A. Also in relation to that purchase, we spoke with all of
17 the salesclerks who conducted the sale and they described that
18 Ms. Wolf actually selected one of the firearms, but
19 Mr. Freshcorn proceeded around the store and selected four of
20 the other firearms to be purchased at that time.

21 Q. When you say "selected," what did he actually do?

22 A. He picked them out, manipulated them, eyed them up,
23 brought them to the front of the counter or asked the
24 salesclerks to allow him to use them or manipulate them in the
25 store.

1 Q. Then he paid for them?

2 A. Correct.

3 Q. But Heather Wolf paid for the -- actually filled out the
4 forms, correct?

5 A. She filled out the form.

6 Q. Do you know anything about the relation between
7 Mr. Freshcorn and Ms. Wolf?

8 A. I believe they dated at one point.

9 Q. They have a child in common?

10 A. They do.

11 Q. Now, these four weapons, including the two AR-style
12 pistols, did you have an opportunity to recover these or did
13 the ATF have an opportunity to recover these?

14 A. Yes, they were recovered.

15 Q. Where were they recovered from?

16 A. 324 Washington Avenue, Oil City, Pennsylvania.

17 Q. We'll talk a little bit about that search warrant later.

18 Now, was the fifth pistol ever recovered?

19 A. It has not been.

20 Q. Now, based on this, you continued to investigate other
21 purchases that might have occurred at this location and others,
22 correct?

23 A. Correct.

24 Q. What was the next purchase that you investigated?

25 A. The next purchase that we began to investigate was the

1 purchase of a .50 caliber Armalite Bolt-Action sniper rifle
2 from Maurer's Trading Post.

3 Q. Approximately when was that purchased?

4 A. That was purchased early September of 2017.

5 Q. What is unusual about a .50 caliber weapon of any sort?

6 A. Its size, for starters, it has very limited uses and it's
7 a large, large weapon.

8 Q. When you say "limited uses," what is it used for?

9 A. It doesn't have any practical everyday uses. It's used by
10 the military for long-range sniper operations. It's used to
11 shoot down helicopters, disable tanks, things of that nature.

12 Q. What is the range for this .50 caliber BMG weapon?

13 A. It could be anything from 100 yards up to 3,000 yards,
14 depending on other variables, it can be even farther than that.

15 Q. Now, the shell that goes into this or the bullet,
16 approximately how long or how big is that?

17 A. Roughly 8 inches.

18 Q. Now, if you were shooting at a regular target based on the
19 size and velocity of this weapon, what would happen with it?

20 A. It would basically eviscerate the target.

21 Q. This is at Maurer's Trading Post, correct?

22 A. That is correct.

23 Q. Approximately how long is this weapon?

24 A. Approximately 5 feet long.

25 Q. Now, this was displayed prominently at the store, correct?

1 A. Correct.

2 Q. The owner actually took a picture of it, correct?

3 A. Correct.

4 Q. I'm going to show you --

5 MR. LANNI: Your Honor, may I approach the witness?

6 THE COURT: Yes.

7 BY MR. LANNI:

8 Q. I'm going to show you what has been previously marked as
9 Government's Exhibit No. 2.

10 What is Government's Exhibit No. 2?

11 A. It is a picture of the .50 caliber Bolt-Action sniper
12 rifle with a gentleman behind it giving thumbs up.

13 Q. Where is that picture from?

14 A. It's taken at Maurer's Trading Post.

15 Q. That .50 caliber weapon, that's not just any .50 caliber,
16 correct?

17 A. No, that's the one purchased at the time by Mr. McNaughton
18 -- I'm sorry, paid for Mr. Freshcorn, the paperwork filled out
19 by Mr. McNaughton.

20 Q. The individual with the thumbs up behind it is who?

21 A. Casey McNaughton.

22 Q. Now, this .50 caliber that is pictured here would later be
23 recovered; correct?

24 A. That's correct.

25 Q. Where was it recovered?

1 A. 324 Washington Avenue.

2 MR. LANNI: Your Honor, I ask that Government's
3 Exhibit No. 3 be admitted into evidence at this time.

4 MR. DeRISO: No objection.

5 THE COURT: Three is admitted.

6 BY MR. LANNI:

7 Q. I'm also going to show you what has been previously marked
8 as Government's Exhibit No. 2.

9 What is this a picture of?

10 A. This is a picture of one of Casey McNaughton's relatives
11 holding the same .50 caliber sniper rifle in front of the
12 address 1754 Camp Coffman Road.

13 MR. LANNI: I ask Government's Exhibit No. 2 be placed
14 into evidence.

15 MR. DeRISO: No objection.

16 THE COURT: No.2 is admitted.

17 BY MR. LANNI:

18 Q. Now, this weapon was purchased on that date, correct?

19 A. Correct.

20 Q. Can you describe -- now you also pulled the 4473 form for
21 that, correct?

22 A. Correct.

23 Q. Casey McNaughton is listed as the bona fide purchaser,
24 correct?

25 A. Correct.

1 Q. However, you also pulled the sales receipt, correct?

2 A. Correct.

3 Q. Who is listed as the purchaser on the receipt?

4 A. Emmett Freshcorn.

5 MR. LANNI: Your Honor, may I approach?

6 THE COURT: Yes.

7 BY MR. LANNI:

8 Q. Let me show you what has been previously marked as

9 Government's Exhibit No. 4.

10 Do you recognize what Government's Exhibit No. 4 is?

11 A. Yes, this is a receipt from Maurer's Trading Post.

12 Q. What is the amount on there?

13 A. \$4,037.94.

14 Q. That's a pretty expensive weapon I would say, right?

15 A. Correct.

16 Q. Who does it say the purchaser on there is?

17 A. Emmett Freshcorn.

18 MR. LANNI: Your Honor, I ask Government's Exhibit No.

19 4 be placed into evidence.

20 MR. DeRISO: No objection.

21 THE COURT: No. 4 is admitted.

22 BY MR. LANNI:

23 Q. Now, as part of your follow-up investigation into that,

24 what was described about the purchase that took place from

25 individuals that you spoke to there?

1 A. When we is interviewed the salesperson from Maurer's
2 Trading Post, she stated that Casey McNaughton had filled out
3 the paperwork, picked out this particular .50 caliber rifle and
4 his new boss at the time was going to be paying for it. She
5 described -- she was not sure who his new boss was, but he was
6 present at the time of the sale. And when it came time for the
7 sales slip to be paid for, Mr. Freshcorn paid the balance using
8 a debit card.

9 Q. Who actually carried the weapon out of the store on that
10 day?

11 A. Mr. Freshcorn.

12 Q. Now, this .50 caliber weapon, did you speak with other
13 witnesses who may have seen or handled this weapon even?

14 A. Yes.

15 Q. Without identifying who this individual is, what did
16 Mr. Freshcorn do with that weapon in terms of that individual?

17 A. At one point in time, Mr. Freshcorn gave this particular
18 .50 caliber weapon to a neighbor in his neighborhood to hold
19 for him while other court proceedings were taking place. He
20 returned to retrieve this weapon after those legal matters were
21 handled.

22 Q. Now, Mr. Freshcorn because of a previous conviction in
23 Pennsylvania state court cannot have any weapons at all,
24 correct?

25 A. That is correct.

1 Q. Now, you continued doing investigation into more possible
2 straw purchases, correct?

3 A. That is correct.

4 Q. Now, you learned of one possibly in December of 2017,
5 correct?

6 A. I believe it was November, but yes.

7 Q. This is one where Mr. Freshcorn and an individual named
8 Mr. Austin Strotman?

9 A. Yes, that is December.

10 Q. Where was the location for this?

11 A. That was Sportsmen Outfitters.

12 Q. This is the same location where Heather Wolf went to buy
13 the weapons?

14 A. Correct.

15 Q. Now, Mr. Freshcorn and Mr. Strotman walked in, now, what
16 was Mr. Freshcorn carrying?

17 A. Mr. Freshcorn was carrying the .50 caliber rifle.

18 Q. That was the weapon pictured in Government's Exhibits 2
19 and 3?

20 A. That is correct.

21 Q. Were there any other weapons -- first off, who was with
22 him?

23 A. Another unidentified individual at the time, we later
24 determined to be Austin Strotman.

25 Q. Was Mr. Strotman carrying anything?

1 A. He was carrying two pistols.

2 Q. When the individuals Mr. Strotman and Mr. Freshcorn got
3 into the store, what did Mr. Freshcorn say what he wanted done
4 with those three weapons?

5 A. At the time, Mr. Freshcorn wanted the store to modify or
6 repair the three weapons that he brought in.

7 Q. Was the store able to do so?

8 A. They were not.

9 Q. Why not?

10 A. That particular store does not employ a gunsmith and they
11 don't do those sort of repairs or alterations.

12 Q. Now, Mr. Freshcorn, then what did he try to do once he
13 couldn't have the weapons fixed?

14 A. He wanted to purchase additional weapons at that time.

15 Q. What was he told about if he were going to buy weapons at
16 that store he had to do?

17 A. If he were going to buy weapons at that time, that he
18 would have to be the one to fill out the paperwork.

19 Q. How did Mr. Freshcorn react when he was told that he could
20 not buy weapons without filling out the paperwork?

21 A. He became very angry with the employees and the staff at
22 Sportsmen Outfitters and he stated that he had never had to do
23 that before.

24 Q. Now, before he left, though, he did buy some things,
25 correct?

1 A. Correct.

2 Q. He bought 120 rounds of .50 caliber ammunition, correct?

3 A. Correct.

4 Q. He bought 100 rounds of .380 caliber ammunition, correct?

5 A. Correct.

6 Q. Some type of targets or what were those?

7 A. 25 pounds of bullseye exploding targets.

8 Q. Now, when Mr. Strotman and Mr. Freshcorn left, how did
9 they bring those items out of the store?

10 A. Mr. Freshcorn carried the .50 caliber rifle and
11 Mr. Strotman carried the two pistols.

12 Q. Now, in terms of Mr. Freshcorn's weapons possession, was
13 there a time when an individual in the neighborhood went to see
14 Mr. Freshcorn at 324 Washington Avenue, correct?

15 A. Yes, correct.

16 Q. When he or she approached Mr. Freshcorn, what did
17 Mr. Freshcorn do or what gestures did he make?

18 A. He made a boasting gesture and raised his shirt up to
19 indicate that he had a pistol on his waistband.

20 Q. Now, this individual also had an opportunity to look
21 inside of 324 Washington Avenue, correct?

22 A. Correct.

23 Q. What did that individual observe inside 324 Washington
24 Avenue?

25 A. The individual observed all the occupants smoking

1 marijuana. On one of the tables inside the residence, they
2 observed a black box, which appeared to be a pistol magazine
3 inside of it, and also plastic bags with a white residue in
4 them, which from his knowledge, he believed to be cocaine.

5 Q. Now, you also learned about Mr. Freshcorn's pending
6 charges in other jurisdictions, correct?

7 A. Correct.

8 Q. You learned about a pending felony case now which he's
9 pled guilty to in Nebraska, correct?

10 A. Correct.

11 Q. What were the facts and circumstances about that case?

12 A. Mr. Freshcorn was taking a road trip with two other
13 friends, they were stopped in a traffic stop and throughout the
14 course of the traffic stop, roughly 5 grams of heroin were
15 recovered, along with other drug paraphernalia, LSD, and some
16 marijuana.

17 Q. Who were the two friends that were in the car with him?

18 A. Autumn Dolby and Casey McNaughton.

19 Q. The same Casey McNaughton that was around as his employee?

20 A. Correct.

21 Q. And Autumn Lee Dolby, who is she?

22 A. His girlfriend.

23 Q. Did you have the chance to investigate weapon purchases
24 made by Ms. Dolby?

25 A. Yes.

1 Q. Now, when did she make any weapons purchases in the State
2 of Pennsylvania?

3 A. We confirmed she has made two weapons purchases, one in
4 April of 2017 and one in November of 2017.

5 Q. What were those for?

6 A. The first purchase in April was for a single pistol. The
7 purchase in November were for a pistol and AK rifle.

8 Q. AK rifle?

9 A. Correct.

10 Q. Now, did you do any follow-up investigation on who
11 actually paid for those or anything like that?

12 A. Yes, we did.

13 Q. Who was it?

14 A. That was Emmett Freshcorn.

15 Q. Additionally, Mr. Freshcorn, you got to learn a little bit
16 about his life and facts and circumstances of his life
17 throughout the investigation, correct?

18 A. Correct.

19 Q. Recently he acquired or inherited a large sum of money,
20 correct?

21 A. Correct.

22 Q. As a result of that was able to buy numerous vehicles,
23 correct?

24 A. Correct.

25 Q. One of those was an Acura SUV?

1 A. Correct.

2 Q. Now, at some point that Acura SUV was being driven by
3 Autumn Lee Dolby and she abandoned it because it was inoperable
4 at some point.

5 A. Correct.

6 Q. It was towed to the PSP barracks in I believe Clarion, PA?

7 A. Correct.

8 Q. Now, when the officers towed it and before they even
9 started an inventory search, they looked in and what did they
10 see in the car?

11 A. They saw two AK-style magazines with rounds inside of
12 them.

13 Q. When, Mr. Freshcorn -- we'll go a little bit further in
14 the future.

15 In March of this year, there were numerous ATF and
16 PSP, meaning Pennsylvania State Police search warrants executed
17 at locations in Venango and Clarion County, correct?

18 A. Correct.

19 Q. One of those was 1754 Camp Coffman Road; correct?

20 A. That's correct.

21 Q. That's the location at which Mr. McNaughton's relative was
22 holding that large weapon, correct?

23 A. Correct.

24 Q. What was recovered at 1754 Camp Coffman Road?

25 A. Various rounds of ammunition.

1 Q. Can you detail what types of ammunition?

2 A. Yes. There was a wide variety. There were two different
3 kinds of shotgun shells, 20 gauge and 12 gauge, pistol
4 ammunition to include a .40 caliber, .380 caliber, .22 and .40
5 caliber, along with a spent shell casing for a .50 caliber BMG.

6 Q. You also searched 324 Washington Road in Oil City,
7 correct?

8 A. Correct.

9 Q. What was recovered? First off, who was home at that
10 location?

11 A. Autumn Dolby and Marta Vasquez.

12 Q. Who is Marta Vasquez?

13 A. Mr. Freshcorn's mother.

14 Q. What was recovered at this location?

15 A. Thirteen firearms were recovered at the location, along
16 with various ammunition and some drug paraphernalia.

17 Q. The 13 firearms, where were they placed, actually?

18 A. Ten of the 13 were placed in a truck lockbox in the
19 entryway of the residence, two were found in a vehicle outside
20 of the residence, and one in the bedroom of the residence.

21 Q. Now, some of those weapons were registered to Ms. Wolf,
22 correct?

23 A. Correct.

24 Q. Some of them were registered to Mr. McNaughton, correct?

25 A. Correct.

1 Q. Some were registered to Ms. Autumn Lee Dolby, correct?

2 A. Correct.

3 Q. Ms. Dolby was there at the time?

4 A. Correct.

5 Q. Since the weapons were registered to her, you had an
6 opportunity to speak with her about those weapons?

7 A. Correct.

8 Q. What type of questions did you ask her about those
9 weapons?

10 A. We just asked her general firearms questions, what kind of
11 weapon it was, what was the caliber, just the general makeup,
12 the color, the style, whether it be a pistol, revolver, rifle
13 or shotgun?

14 Q. What answers did Ms. Dolby have for you?

15 A. She did not provide us with a lot of information. She did
16 not know the caliber or make of a lot of the firearms.

17 Q. Did she know where the firearms were even stored?

18 A. No.

19 Q. Now, you also searched Casey McNaughton's home, correct?

20 A. Correct.

21 Q. Where was that, 406 Hoffman Road?

22 A. Correct.

23 Q. Were any of the weapons that he purchased there?

24 A. No.

25 Q. Was there any ammunition there?

1 A. No.

2 Q. Did you recover a weapon from there, though?

3 A. Yes.

4 Q. What type of weapon was that?

5 A. That was a .22 caliber rifle.

6 Q. That came to him in which way he told you?

7 A. He inherited it from either his grandfather or father.

8 Q. Did you find any other types of incriminating information
9 or items at Mr. McNaughton's home?

10 A. No.

11 Q. Was there any drug paraphernalia found?

12 A. There was drug paraphernalia found.

13 Q. While these search warrants were taking place, this was
14 after an indictment was returned against Mr. Freshcorn,
15 correct?

16 A. Correct.

17 Q. Mr. Freshcorn was not found at any of these locations?

18 A. He was not.

19 Q. However, later, members of ATF did locate Mr. Freshcorn,
20 correct?

21 A. That is correct.

22 Q. Where was he found?

23 A. He was located at the Hyatt House in Pittsburgh,
24 Pennsylvania.

25 Q. That's approximately in the Bloomfield region of the City

1 of Pittsburgh, correct?

2 A. Yes, sir.

3 Q. Now, when he was discovered, he was driving what vehicle?

4 A. A red Corvette.

5 Q. What was found inside the red Corvette?

6 A. An AR-style magazine loaded with ammunition, and also
7 drugs and drug paraphernalia.

8 Q. Mr. Freshcorn was cooperative, correct?

9 A. Correct.

10 Q. He indicated that he was able to do what at that time?

11 A. Purchase additional drugs.

12 Q. Why is that?

13 A. Because he frequently uses drugs on a regular basis.

14 MR. LANNI: I have no further questions for Mr. Isbir.

15 THE COURT: Cross.

16 MR. DeRISO: Thank you.

17 CROSS-EXAMINATION

18 BY MR. DeRISO:

19 Q. Good afternoon, Agent.

20 A. Hello, sir.

21 Q. Your investigation began with Mr. Freshcorn because of a
22 gun shop noting some irregularities in purchases, is that
23 correct?

24 A. The irregularities were noted by our Crime Gun Center.

25 Q. It wasn't because anybody in Oil City reported

1 Mr. Freshcorn acting crazy or dangerous with weapons?

2 A. No, sir.

3 Q. Through your investigation, other than this confidential

4 source which claimed to you that at some point in the past

5 Mr. Freshcorn made a gesture to his front shirt gesturing that

6 maybe he had a firearm, other than that, and your investigation

7 over the past year, no one had come forward and said

8 Mr. Freshcorn was acting dangerous or crazy with guns and

9 threatening them, correct?

10 A. No, that's actually incorrect.

11 Q. There was a witness?

12 A. Yes, sir.

13 Q. Who would that be?

14 MR. LANNI: Your Honor, I object to identifying who
15 the witness is at this point. I don't think it's -- he can ask
16 him about the content of what he said, but I don't think
17 there's any pretrial rule, especially at a detention hearing to
18 disclose a witness at this time.

19 THE COURT: Let's ask him what the witness said, then
20 we'll decide.

21 BY MR. DeRISO:

22 Q. Is this the confidential source named in your search
23 warrant?

24 A. This is a different event.

25 Q. Different event, same source?

1 A. No, incorrect.

2 Q. What did this individual tell you about Mr. Freshcorn?

3 A. Once Mr. Freshcorn --

4 Q. Date, when did he say it happened?

5 A. I don't know an exact date.

6 Q. So, he told you about an incident but was unable to date
7 it?

8 A. I have the date, I just don't know off the top of my head.

9 Q. Was it in the past year?

10 A. Yes.

11 Q. Can you tell us about the incident?

12 A. Yes, absolutely. It was when he was denied the purchasing
13 of the firearms at Sportsmen Outfitters, he was -- when he
14 became irate and angry, he left the store and several customers
15 in the store asked the salesclerk to lock the door after he
16 left for fear that he would return.

17 Q. So the incident that you told the Court about is the
18 incident that you are speaking of now?

19 A. Correct.

20 Q. So, other than that, you had no one saying he was acting
21 with a firearm, since he purchased these firearms, he wasn't
22 toting the firearms around town acting irresponsible?

23 A. Just the one time.

24 Q. Even that one, there was no firearm shown, he acted as if
25 he had one?

1 A. No, the firearm was visibly seen.

2 Q. That's what your source says?

3 A. Yes, sir.

4 Q. So prior to Mr. Freshcorn's conviction in August of 2017,
5 which the allegation is that is what made him ineligible to
6 purchase firearms in the fall of 2017, correct?

7 A. Correct.

8 Q. Around that time?

9 A. Around that time, yes.

10 Q. Prior to that, early in 2017, he was legal to purchase
11 firearms, correct?

12 A. No, that is incorrect. He was prohibited for -- he had a
13 prohibited offensive weapons charge in 2009, I believe.

14 Q. Was that 2009?

15 A. I believe so.

16 Q. That was the one in Clarion County?

17 A. Yes.

18 Q. So from 2009, that was the simple assault, prohibitive
19 offensive weapon when he was 21?

20 A. Correct.

21 Q. From that point forward, it was the allegation that he was
22 not permitted to obtain weapons?

23 A. Correct.

24 Q. The information you received regarding Mr. Freshcorn, a
25 lot of your investigation focused on the past eight months,

1 correct?

2 A. Correct.

3 Q. That's where a lot of this or all of the activity that is
4 concerning took place over the past eight months, correct?

5 A. Correct.

6 Q. Through your investigation, you learned that
7 Mr. Freshcorn's father passed in February '17?

8 A. Correct.

9 Q. You also learned, as you testified, he came upon a
10 substantial amount of finances?

11 A. That is correct.

12 Q. The individuals who were charged with helping
13 Mr. Freshcorn with the estate, through your investigation, you
14 determined that he was basically given approximately three
15 quarters of a million dollars?

16 A. Approximately.

17 Q. Through your investigation, you determined Mr. Freshcorn's
18 drug use exponentially increased?

19 A. Yes, sir.

20 Q. His drug of choice, was it a mixture of things, or was it
21 heroin?

22 A. Mixture of things.

23 Q. So, when he was in Nebraska and he was pulled over, the
24 weight he was caught with wasn't an extraordinarily large
25 amount of weight coming back with him, agreed?

1 A. I can't speak on what is extraordinary and what is not.

2 Q. You're DEA -- you're ATF, right?

3 A. Yes, sir.

4 Q. So five grams of heroin would you consider an
5 extraordinary amount of weight?

6 A. Depends on your personal usage.

7 Q. So when he was caught, he was caught with about 100 bags,
8 right?

9 A. I don't believe that's accurate.

10 Q. How much was on his person?

11 A. I believe it was 50 bags.

12 Q. So he had 50 bags of heroin on his person. You don't know
13 how those are weighted out, do you?

14 A. I do not.

15 Q. When he was in Nebraska, there were no firearms, correct?

16 A. Correct.

17 Q. So he traveled across the state in a vehicle, was coming
18 back, he pled guilty, so there were narcotics in the vehicle
19 and there were no firearms, correct?

20 A. Correct.

21 Q. Also during your investigation, you had occasion to look
22 at his properties?

23 A. Yes, sir.

24 Q. When you were looking at his properties, did you notice
25 the sandbags in the area in which the what appeared to be -- I

1 don't want to say shooting range, but it was clear that
2 firearms were being shot back there?

3 A. I did not notice personally any sandbags, but there were
4 shell casings.

5 Q. Mr. Smith will testify, but there were sandbags and
6 targets and things of that nature in the one central area?

7 A. Again, I did not notice those myself.

8 Q. The items he purchased, the exploding targets, obviously,
9 that would be consistent with someone who is using various high
10 velocity firearms to shoot the targets, correct?

11 A. That is correct.

12 Q. Because those targets typically won't explode with a .22
13 or a .380, correct?

14 A. Correct.

15 Q. When you arrested, when you took Mr. Freshcorn into
16 custody at the Pittsburgh Hyatt, he was visibly under the
17 influence of narcotics?

18 A. I was not present at the time, but as I was told, yes.

19 Q. He was cooperative?

20 A. Yes.

21 Q. There were no firearms on his person, correct?

22 A. Correct.

23 Q. The magazine of ammunition that was found in his Corvette,
24 was that consistent to be used with one of the firearms that
25 was back in Oil City?

1 A. It was.

2 Q. The question Mr. Lanni asked you about Mr. Freshcorn, upon
3 being taken into custody, he attempted to help federal agents
4 through cooperation, correct?

5 A. Correct.

6 Q. That interested you, the agents, and they helped
7 facilitate certain communications with certain other actors,
8 correct?

9 A. That is correct.

10 Q. The firearms, they were found locked in a box -- that's a
11 nursery rhyme somewhere -- locked in a box, they were locked in
12 a box at his residence, correct?

13 A. The majority of them.

14 Q. One was in the bedroom and two were found in a vehicle?

15 A. That is correct.

16 Q. Were any of them loaded?

17 A. Not to my knowledge.

18 Q. The ammunition was kept in a separate place, correct?

19 A. Yes, sir.

20 Q. So, if someone wanted to use that gun, they would have had
21 to unlock the box, find the ammunition, put in a magazine,
22 which was located in a separate facility or separate location,
23 and then load the firearm?

24 A. That's correct.

25 Q. That's accurate?

1 There's no evidence that Mr. Freshcorn was reselling
2 the firearms, correct?

3 A. Correct.

4 Q. There's no evidence that he was trading firearms for
5 drugs, correct?

6 A. Correct.

7 Q. Outside of the one firearm, which you know where it is,
8 correct?

9 A. Which --

10 Q. You said there's one firearm that wasn't recovered?

11 A. Yes, there were several that were not recovered.

12 Q. Have you interviewed either your sources or the occupants
13 of the residence to determine the location of those firearms?

14 A. We have interviewed the occupants of the residence, but
15 not -- one other individual still needs to be interviewed.

16 MR. DeRISO: May I have one second, Your Honor.

17 BY MR. DeRISO:

18 Q. The picture you have is of the that McNaughton character
19 .50 the 50 cal?

20 A. Correct.

21 Q. The .50 cal, did it jam and need repaired, is that what
22 happened?

23 A. No, he wanted a new stock provided.

24 Q. Do your sources indicate who was firing the .50 cal?

25 A. No.

1 Q. So, the only evidence you have regarding the .50 cal was
2 the picture of the individual holding the .50 cal and the
3 ammunition that you indicate Mr. Freshcorn purchased, correct?

4 A. Also, the fact that he had given it to a neighbor,
5 retrieved it, had made modifications to it such as adding a
6 scope, wanting to get the stock repaired.

7 Q. Shooting it, how about shooting it?

8 A. Shooting it, we had one person tell us that he had fired
9 the weapon.

10 Q. That was in his backyard into a tree stump?

11 A. In his backyard. It was not specified what he was
12 shooting at.

13 Q. When you learned it was in his backyard, is that what
14 caused you to go to his backyard and look at his target range?

15 A. Again, I never saw his target range.

16 MR. DeRISO: Thank you.

17 That's all I have, Judge.

18 THE COURT: Mr. Lanni.

19 MR. LANNI: No redirect.

20 THE COURT: Agent, how many guns of the guns that you
21 testified about are in the possession of ATF right now?

22 THE WITNESS: Thirteen.

23 THE COURT: How many guns are at large, so to speak?

24 THE WITNESS: Approximately five guns are at large.

25 THE COURT: Do you have any idea where those guns are?

1 THE WITNESS: We need to speak with a few other
2 individuals to, hopefully, determine where they may have gone.

3 THE COURT: But they're not at 324 Washington?

4 THE WITNESS: No, ma'am.

5 THE COURT: Thank you.

6 Anything else?

7 MR. LANNI: I have no follow-up based on that.

8 I have no further witnesses either.

9 THE COURT: Mr. DeRiso?

10 MR. DeRISO: I do, Judge.

11 FURTHER CROSS-EXAMINATION

12 BY MR. DeRISO:

13 Q. Your not locating the firearms does not equate to a
14 concern that they're on the street, a legitimate concern.
15 We're always concerned about that, I'm not being smart, but a
16 legitimate concern, is there a legitimate concern that those
17 firearms are somewhere on the street?

18 A. Absolutely.

19 Q. When you spoke to Mr. Freshcorn that evening, didn't he
20 explain to you where some of the other firearms were?

21 A. Again, I was not there present at his arrest and did not
22 speak to him that night.

23 MR. DeRISO: Thank you.

24 THE COURT: Thank you, Agent. You may step down.

25 Does the defense have any witnesses or evidence to

1 present?

2 MR. DeRISO: We may, Judge. May I have one minute.

3 (Whereupon, there was a brief pause in the proceedings.)

4 MR. DeRISO: Judge, may I have one second with
5 Mr. Lanni.

6 THE COURT: Yes.

7 MR. DeRISO: Judge, can I call Mr. Smith for a quick
8 witness regarding certain evidence at a location?

9 THE COURT: Sure.

10 THE CLERK: Kindly state and spell your full name for
11 the record.

12 THE WITNESS: James M. Smith, S-M-I-T-H

13 JAMES M. SMITH, a witness having been duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DeRISO:

17 Q. Sir, can you please identify yourself?

18 A. James M. Smith.

19 Q. You were employed by myself in the Freshcorn case?

20 A. Correct.

21 Q. One of the things that we asked you to do was to go to the
22 properties in Oil City and look at the one farm for evidence of
23 a shooting range?

24 A. Sure.

25 Q. Did you do that?

1 A. I did.

2 Q. When did you go and what was the location?

3 A. Friday, March 16th. The location was 1754 Camp Coffman
4 Road.

5 Q. It was snowy out that day?

6 A. It was.

7 Q. When you went there, can you describe the condition of the
8 property?

9 A. It's a large farm, a lot of farm equipment around it,
10 several out buildings, a house, several old cars.

11 Q. I'm going to show you an exhibit collectively we've marked
12 as Defense Exhibit A.

13 Can you please identify those pictures.

14 And let me ask you this. What were you looking for on
15 this farm?

16 A. We had conversations with the client.

17 Q. Without going into what he said, what were you looking for
18 on his farm?

19 A. We were looking for a shooting range, evidence of
20 shooting, sandbags, targets, the like.

21 Q. When you got there, did you find evidence of a shooting
22 range?

23 A. I did.

24 Q. Those three pictures there, I've showed them to Mr. Lanni,
25 I don't think he's going to object to their admission.

1 MR. LANNI: No objection.

2 BY MR. DeRISO:

3 Q. Can you describe what they are?

4 A. The first picture would show several sandbags that are
5 laying on the ground covered partially in snow near a
6 concrete -- I believe it's a concrete slab of some sort where
7 obviously the sandbags were placed to steady a rifle, firearm.

8 The second photo is a stump that had a target
9 apparently attached to it. We had to kick around in the snow a
10 little bit to find it, it had either blown off or been taken
11 down.

12 Q. How far was that from the sandbags?

13 A. I would say no more than 100 yards which in western
14 Pennsylvania is a typical shooting range, guys that hunt, sight
15 their guns in, that sort of thing.

16 Q. You're an avid hunter?

17 A. I am a hunter.

18 Q. So that is typical?

19 A. Typical where you'd sight in.

20 Q. The third picture you have?

21 A. The third picture is from the sandbags down to the stump,
22 which I would estimate to be approximately 100 yards.

23 MR. DeRISO: Judge, I'd move these into evidence.

24 THE COURT: Defense Exhibit A consisting of three
25 photographs is admitted.

1 MR. DeRISO: I have A1, A2 and A3 consistent with how
2 he testified.

3 BY MR. DeRISO:

4 Q. Did you find any shell casings?

5 A. I did.

6 Q. Was it a variety of shell casings?

7 A. It was.

8 MR. DeRISO: That's all I have, Judge.

9 THE COURT: Any cross?

10 MR. LANNI: Very briefly.

11 CROSS-EXAMINATION

12 BY MR. LANNI:

13 Q. Mr. Smith, you had an opportunity to survey and view the
14 property in the course of this. In that property, is it close
15 to any houses or anything?

16 A. There is a house down below it. If I was facing the
17 house, to my left would be a very large field. At the house
18 itself, there would be out buildings behind the house. To the
19 right of the house would be woods. There is a house down the
20 road some distance, I don't know what that distance is.

21 Q. This general area out there, it's pretty rural, right?

22 A. Certainly is.

23 Q. Are there lights kind of out there?

24 A. When you say "lights"?

25 Q. In the area where this was, were there lamp posts,

1 lighting?

2 A. I don't recall that, but I was out there during the
3 daytime. I really didn't pay much attention to that. I knew
4 what I was there to look for and so that's what I looked at.

5 Q. Any roads by there or anything?

6 A. There are, there are roads that sit on a crossroad kind
7 of, yet down below the field. There are a lot of old roads.

8 Q. How far is that, approximately, from the shooting range
9 that you looked at?

10 A. The range was right in the back, backyard. You could walk
11 out the back of that house and probably within 50 to 75 yards
12 be right where that range was.

13 Q. Very close to the house?

14 A. Very close to the house.

15 Q. Let me ask you this. Were the house, any of the other
16 buildings, the outhouses below the field, the road, any other
17 cars, was that within 3,000 yards you would say?

18 A. I couldn't tell you that. But those guns are built
19 sometimes for competitive shooting and distance. Typically,
20 you wouldn't fire that around your house. Now, you would save
21 the shells from those because they can be reloaded. So,
22 finding a shell there might not mean a discharge at that
23 location.

24 Q. So, we're talking about, you have some experience in
25 competitive shooting or hunting?

1 A. I don't do it, but I have friends who do it. It's beyond
2 my comprehension.

3 Q. You have some knowledge about it, correct?

4 A. Yes.

5 Q. May be sharp shooting or things like that?

6 A. Uh-huh.

7 Q. So .50 caliber, which has a range of 3,000 yards and can
8 shoot a tank or an aircraft out of the air, would that be used
9 for competition shooting?

10 A. They use those. Actually, I have friends that own those.

11 Q. When they have those types of competitions, do they have
12 just -- are they by houses?

13 A. Not typically.

14 Q. They're not, not typically, right. Are they by roads?

15 A. You have to get in, you have to get into the shooting
16 range, but typically, you have to have a place that has a
17 lengthy distance to shoot at that distance.

18 Q. You also need supervision, right? You need some type of
19 people watching this, correct, spotters?

20 A. Well, my experience with it is you do need not necessarily
21 spotters, but it's unusual for one guy to go out there by
22 himself, load it up and fire at a target that is several
23 thousand feet away.

24 Q. It's unusual, probably not safe?

25 A. I wouldn't be qualified to give you an opinion on that.

1 MR. LANNI: No further questions.

2 MR. DeRISO: One follow-up, Judge.

3 REDIRECT EXAMINATION

4 BY MR. DeRISO:

5 Q. The area where the gun was being fired, it was at a
6 downhill trajectory?

7 A. It was.

8 Q. So if target were missed, it would go into a hillside?

9 A. It should, theoretically. There were a lot of trees down
10 below that.

11 Q. So behind the target there was no danger of houses or cars
12 or roads or anything like that?

13 A. I didn't see anything there that would give me pause if I
14 was sighting a gun on that site.

15 MR. DeRISO: Thank you.

16 THE COURT: Mr. Lanni?

17 MR. LANNI: I have no recross based on that.

18 THE COURT: Mr. Smith, you're excused.

19 Anything else from the defense.

20 MR. DeRISO: No, Your Honor.

21 THE COURT: Mr. Lanni, do you have argument?

22 MR. LANNI: Yes, Your Honor.

23 Your Honor, I think in this case, not to make a

24 shooting analogy, but a lot of the things missed the mark

25 because what we have here is not about whether or not he was

1 using this for a shooting range or what he was assembling the
2 weapons for, that it wasn't used in a crime of violence, it
3 completely misses the point of the danger to the community, and
4 I think there are some flight issues that are possibly at risk
5 here as well, too, based on his erratic nature, drug use.
6 Means and income also is another possibility. But really, we
7 have to look at danger here. What the danger is is not just
8 simply that these types of weapons are actively being used in
9 crimes of violence or that they're being traded for drugs,
10 straw purchasing in itself, and this is what we have here in
11 this case, Your Honor, while the defendant is only charged with
12 one count of possession and ammunition, the evidence that the
13 government put forth is really showing that this is a somewhat
14 fairly large pattern of straw purchasing. Your Honor, what the
15 problem is with straw purchasing is that we have an entire
16 regulatory system set up for extremely dangerous weapons. I
17 don't think anybody, whether you're an avid hunter, whether
18 you're in the military, denies that these are extremely
19 dangerous weapons. Any gun is extremely dangerous. But in
20 this case, we have AR pistols, we have .380 caliber rifles. We
21 have AK-47s, we have .50 caliber sniper rifles that can shoot a
22 tank, that can shoot a helicopter. So, whether they're out
23 there being actively used I think completely misses the mark of
24 what the real danger is. The danger is that because of
25 Mr. Freshcorn's instability and his really pathological need to

1 compile dangerous weapons and ammunition, we have dangerous
2 weapons and ammunition all across Western Pennsylvania. There
3 are weapons that are unaccounted for. There are weapons that
4 are in the house. There are weapons that could be used for
5 target practice, for shooting. That's extremely dangerous. So
6 I don't think, while this is not a presumption case, the
7 government, I think, can show that the charges and the nature
8 of the charges here are extremely dangerous.

9 And, Your Honor, the Attorney General just started a
10 program called try and lie cases. These are cases that have to
11 be aggressively prosecuted where people who try to go buy guns
12 illegally, where they just have the brazen ability to walk up
13 to a store and buy a gun. That's exactly what Mr. Freshcorn
14 did. He was irate that he could not just go in and buy a
15 weapon, even though he was prohibited from doing so. So I
16 think the fact that these weapons were not used in crimes of
17 violence or they weren't used in drug trafficking crimes
18 completely misses the mark as to what the real danger is here
19 and the real danger Mr. Freshcorn poses, regardless of any
20 conditions that can be imposed.

21 I think we really have to look at Mr. Freshcorn's
22 history in total to really get to that because, Your Honor,
23 drug addiction and alcohol, let's not forget about alcohol
24 abuse and addiction because that's just as bad, those are
25 really dangers and evils that everybody faces, families face,

1 different individuals face, and it can be helped and it can be
2 cured, but Mr. Freshcorn here, I think his violent kind of
3 tendencies go beyond that. I mean he is first adjudicated
4 delinquent at 14 for robbery. He has two more juvenile
5 adjudications. Then he has two DUIs where he has the highest
6 rate, .16 or above. Then he has simple assault and the
7 possessing the weapons that made him ineligible all the way
8 back in 2009. Then he has terroristic threats. Then he has
9 the felony drug charge in Nebraska where he was driving
10 cross-country with 5 grams of heroin or fentanyl, from my
11 estimation that would be more than 50 bags, probably be five
12 bricks, which would be 250, but that's just an estimate. LSD.
13 We also now have a charge and a guilty plea that might have
14 been changed to cruelty to animals. Then we have another
15 charge. So, we have here, really, a history of danger of
16 noncompliance, of drug use, of proclivity for weapons and
17 ammunition. This is not a Second Amendment debate here, this
18 is not a Second Amendment argument because Mr. Freshcorn can't
19 possess weapons. He can't have any weapons. He can't have
20 other people buy weapons for him.

21 Your Honor, when we really get down to it of whether
22 there can be any conditions or combination of conditions that
23 can be put into place to prevent this behavior and to prevent
24 who Mr. Freshcorn is, and I think it's way beyond just -- it's
25 a terrible thing, his father died, he was probably close with

1 him, but that's not an excuse to illegally buy weapons, buy
2 drugs, flash weapons at people. It is simply not an excuse at
3 all. Millions of people have their parents die every day, are
4 affected by loss and they don't act out this way.

5 Then we have to look at what are the conditions or
6 combination of conditions that can be used to assure that this
7 type of behavior can't happen. There are several troubling
8 things. One, Your Honor, is that everyone around Mr. Freshcorn
9 is not only an enabler but a co-conspirator. His girlfriend,
10 Autumn Dolby, straw purchased weapons for him. His employee,
11 Casey McNaughton, straw purchased weapons for him. Austin
12 Strotman was helping him straw purchase weapons. When he's
13 arrested in Nebraska, he has Casey McNaughton and Autumn Lee
14 Dolby with him.

15 Unfortunately, Your Honor, I don't know what type of
16 regime can be put in place to protect Mr. Freshcorn from
17 himself or to protect society from Mr. Freshcorn because if
18 he's in an inpatient facility, unfortunately, he can, while it
19 would be a violation of his conditions, he can just walk out,
20 he can leave. There's nothing keeping him there.
21 Additionally, there's nothing keeping him with access to these
22 people. If he's on home detention with electronic monitoring,
23 how does that prevent these types of things from occurring when
24 you have every single person around you enabling you.

25 Your Honor, if this was a one-time gun possession case

1 where Mr. Freshcorn is a convicted felon, he gets caught with a
2 weapon, I think the complexion of this case is completely
3 different. We don't have the dangers to the community and the
4 dangers to himself, but here we have a proclivity for compiling
5 weapons, dangerous weapons, ammunition, combined with drug use,
6 and the means to do it, Your Honor, that Mr. Freshcorn has, has
7 essentially created a deadly combination for himself and others
8 to put him in the cyclone of access to money, access to
9 weapons, friends that will help him. Your Honor, nothing is
10 going to prevent that, short of incarceration, because of the
11 history and pattern of Mr. Freshcorn, as well as the very real
12 nature of what is going to stop Mr. Freshcorn from -- he bought
13 all these weapons he was not supposed to. He's told by the
14 store you can't buy weapons, so you buy a ton of ammunition,
15 then you get irate to the point where people are upset and
16 scared of him. That's very troubling, Your Honor. So I don't
17 think there are any combinations or conditions of combinations
18 that can prevent Mr. Freshcorn from exhibiting this type of
19 dangerous behavior and putting weapons out on the street for
20 those uses.

21 THE COURT: Thank you, Mr. Lanni.

22 Mr. DeRiso.

23 MR. DeRISO: Thank you, Your Honor.

24 The government needs the Court to consider
25 Mr. Freshcorn being a flight risk, even though they have

1 presented no evidence of such, and their burden on that is, I
2 believe clear and convincing. So, they need the Court to
3 consider that in order to stomp out the options for the Court
4 to consider, i.e., home electronic monitoring and inpatient --

5 MR. LANNI: Your Honor, I'll withdraw any mention for
6 risk of flight or anything like that at this point.

7 THE COURT: Okay.

8 MR. DeRISO: If that's the case then, that begs the
9 question of him fleeing a condition of house arrest and/or
10 inpatient is nonsensical because he's always been a member of
11 the community. He has always appeared for court. I think
12 there are a couple of occasions, one was a technical matter, I
13 think the other one he was incarcerated at the time and didn't
14 make a Nebraska hearing.

15 THE COURT: One could argue that we don't want him out
16 buying guns, for example, or heroin.

17 MR. DeRISO: We don't want anyone buying --

18 THE COURT: I often put people on electronic
19 monitoring or house arrest because they're a danger to the
20 community.

21 MR. DeRISO: If Mr. Freshcorn did things to conceal
22 the purchases or did things dangerous with the firearms, or
23 when they went to the house, they were haphazardly loaded and
24 all over the place, I think that would give the government's
25 argument more weight, but here we have somebody who, again,

1 ignorance of the law is not a defense, however, Mr. Freshcorn
2 did not -- he freely used his card. He wasn't trying to hide
3 his identity, so why he did that might be something we get into
4 later, but this wasn't a, quote/unquote, straw purchase where
5 this Court sees I buy a gun with my money and I give it to
6 Mr. Zunder, I just hand it to him and then report it stolen.
7 That's often the case. This is where Mr. Freshcorn was
8 allegedly in there, used his money, didn't do anything to hide
9 his identification, and there's evidence that the guns were
10 being used on his property in a safe manner. So, I get there's
11 a concern, being concerned does not equate to a dangerous
12 person where conditions could not satisfy the Court's concern.

13 So, I would ask the Court to consider a couple of
14 conditions. The other thing is, if you look at his report that
15 Mr. Lanni extensively went through, there's nothing from 2009
16 for seven years. It's stale. Mr. Freshcorn, obviously,
17 something triggered him. Yes, right or wrong, his father's
18 passing triggered a lot of things in 2017. Those things need
19 to be dealt with, so I think Mr. Freshcorn needs a mental
20 health eval, an inpatient rehab. And I understand that the
21 Court protecting society is its first concern, however, I don't
22 agree with the government that society at large needs protected
23 from someone who had these firearms and the manner in which
24 they were kept and purchased. It wasn't some seedy operation.
25 They weren't being used to trade for drugs. They were actually

1 safely held. So I would ask the Court to consider those
2 conditions, Your Honor.

3 Thank you.

4 THE COURT: What about the issue of, I think one of
5 the things that you were proposing is that once he's out of
6 drug rehab, that he would go back to this 324 Washington Avenue
7 address.

8 MR. DeRISO: Yes, Your Honor. If he were to --

9 THE COURT: I'm a little concerned because doesn't
10 Autumn Dolby live there?

11 MR. DeRISO: I have been instructed by my client, she
12 will not be living there by the end of this weekend. That I
13 can tell you. We are okay and Mr. Freshcorn is nodding his
14 head affirmatively, the Court can impose no contact with
15 Autumn, with McNaughton, with whoever these alleged straw
16 purchasers are. We have no problem with that. It wasn't done
17 in the context that it is usually done that is being alleged.

18 THE COURT: The mother is the one who lives there?

19 MR. DeRISO: Yes, Your Honor.

20 THE COURT: This matter comes before the Court on the
21 request of the government to detain the defendant, Emmett
22 Freshcorn, pending the trial of this matter.

23 In considering this request, I am guided by several
24 principles. First, at all times, the defendant is entitled to
25 the presumption of innocence. Nothing that takes place at the

1 hearing or that I set forth in my findings is intended or
2 should be construed to affect that presumption. Rather, the
3 purpose of this hearing is to determine whether not
4 withstanding that presumption of innocence, the defendant
5 should be detained pending trial.

6 Second, under the Bail Reform Act, detention is an
7 exceptional step. Under the act, a defendant must be released
8 prior to trial, unless a judicial officer finds that no
9 conditions or combination of conditions exist which will
10 reasonably assure the safety of any other person in the
11 community and assure the appearance of the defendant.

12 In this case, the government seeks to detain the
13 defendant under Section 3142(f)(1), I think, or is it (f)(2),
14 Mr. Lanni? It's a crime of violence, right, the charge?

15 MR. LANNI: It is not, Your Honor.

16 THE COURT: It would be (f)(2) then, risk of --

17 MR. LANNI: Your Honor, it would just be danger to the
18 person or community.

19 THE COURT: There wasn't anything checked on your
20 hearing -- you are just saying the government is entitled to a
21 hearing, but there's nothing --

22 So it's either going to be a crime of violence as
23 defined in 18 United States Code 3156.

24 MR. LANNI: It is not.

25 THE COURT: So then are we looking at the chance that

1 he's a flight risk or a risk of obstruction of justice?

2 MR. LANNI: Your Honor, I think that if we were to
3 have to argue upon these points, that it was possession or use
4 of a firearm or other dangerous weapon, that's what would
5 entitle us to the hearing. That would be subsection (e).

6 THE COURT: 3142(e).

7 MR. LANNI: Defendant is charged with a felony, which
8 is not a crime of violence but involves a minor victim,
9 possession or use of a firearm or destructive device or other
10 dangerous weapon, so I believe that would entitle us to --

11 THE COURT: That entitles you to your hearing?

12 MR. LANNI: Yes.

13 THE COURT: This is not a presumption case, as
14 everyone has agreed. So, I must then turn to the four factors
15 that the Bail Reform Act requires me to consider.

16 The first is the nature and circumstances of the
17 alleged offense.

18 So on the face of it, it's a charge of possession of
19 guns and ammunition by a convicted felon. As Mr. Lanni argued,
20 and showed via testimony, there's a lot more to the story, it's
21 not just a gun, it's a lot of guns, and guns that are indeed
22 very dangerous guns.

23 The second is the weight of the evidence against the
24 defendant.

25 I would find that the evidence is strong that

1 Mr. Freshcorn did commit the crime as charged.

2 Third is the history and characteristics.

3 So, we do have some things, Mr. Freshcorn, while you
4 were younger, a rash of things, actually. And then it seems
5 that in '09, you either stopped or for whatever reason weren't
6 charged. I do have two violations while on parole, which does
7 give me pause, but, again, the more recent one of those was in
8 '09, so that was quite some time ago.

9 You did have some employment, although it's not
10 indicated in the pretrial report, I think you did work for your
11 father.

12 THE DEFENDANT: Yes.

13 THE COURT: At least until he died.

14 Your family ties, you have a mother here, you have
15 been in the community for quite some time. You do have,
16 though, a history of drug use, including heroin, which is very
17 serious.

18 I think that the government is withdrawing their risk
19 of flight allegation?

20 MR. LANNI: Yes, Your Honor.

21 THE COURT: I would have found there is no flight risk
22 in any event.

23 The question is, are you a danger to the community
24 when you're released?

25 All these guns are very scary to me and I think to

1 everyone here. There is no evidence that the guns were used in
2 a violent way. They seem to have been used for target practice
3 and recreational shooting. When they were around, if I heard
4 the testimony correctly, they were either locked or not loaded,
5 the ones that were found.

6 It is my impression that all of this was triggered
7 when you started using drugs. It appears to me that if you are
8 not using drugs, you are not a danger to the community, so
9 because of that, I think that we can impose conditions that
10 would ensure, reasonably ensure the safety of the community,
11 but those will have to be very stringent conditions. You do
12 have some money, so that's going to play into this.

13 I am going to release you on some stringent
14 conditions, and I'm going to tell you that if you violate,
15 there will be an arrest warrant and you will be incarcerated,
16 no ifs, ands or buts about that.

17 I'm going to have you post a \$100,000 unsecured bond.
18 So that means you don't have to post bond in order to be
19 released today, but you are binding yourself in that amount
20 should you fail to appear for any future court proceedings.

21 You will be monitored by Pretrial Services.

22 You will surrender any passport you may have to
23 Pretrial Services. You will not obtain any passport or any
24 travel documents.

25 Your travel is restricted to the Western District of

1 Pennsylvania.

2 You are to avoid all contact, directly or indirectly,
3 so that includes text messaging, phone calls with anyone who
4 is a victim or witness in this investigation. I am concerned
5 about the people who are alleged to have been with you in
6 buying these guns.

7 You are to get psychiatric treatment.

8 You are not to possess a firearm.

9 You are to avoid the excessive use of alcohol.

10 You are not to use or unlawfully possess any narcotic
11 drugs. You'll be drug tested.

12 I want you to do a minimum of 30 days of inpatient
13 treatment, and that's going to be at your own expense, and more
14 if pretrial directs that.

15 When you are released, I'm going to put you on home
16 detention with electronic monitoring.

17 You are to report to pretrial any contact that you may
18 have with law enforcement.

19 I'm hopeful that if we do that, that you will be
20 clean, and if you are not using drugs, then you will not buy
21 guns because, look, I know there's a Second Amendment, everyone
22 wants a gun, but you can't have a gun because you have a prior
23 conviction, it is that simple, so you need to find another type
24 of recreation. I think that if you stop using drugs, that will
25 happen. Now, if you walk away from this inpatient program, a

1 warrant will be issued and you will be arrested.

2 Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: I don't know if we have a bed for you, so
5 we can hold you until we find a wed.

6 MR. BOSSART: Your Honor, given the defendant has been
7 in custody since mid March and does presumably have achieved
8 some measure of sobriety, we would ask that he be held pending
9 his placement, in other words, he be released directly to that
10 inpatient substance abuse care facility, again, with
11 arrangements to be made by defense with approval of Pretrial
12 Services.

13 THE COURT: What I'm going to do is on the release
14 papers, I'm going to say the marshal is ordered to keep the
15 defendant in custody until notified by the clerk or judge, that
16 the defendant has complied with all other conditions of
17 release. And I'm going to put in here, obtained placement in a
18 rehab facility approved by Pretrial Services.

19 MR. BOSSART: Yes, Your Honor.

20 MR. DeRISO: Your Honor, when we're done with the
21 rehab, I want to switch gears for one second when we're done
22 with that issue before you issue the final order.

23 THE COURT: Go ahead.

24 MR. DeRISO: He has a court appearance in Nebraska. I
25 would ask the Court to allow him to go there without us having

1 to file a motion to travel.

2 THE COURT: Right.

3 Is that a district or is it just Nebraska?

4 THE DEFENDANT: Lincoln, Nebraska.

5 THE COURT: When is that, do you know?

6 MR. DeRISO: He's supposed to call probation tomorrow,
7 Your Honor. If he's incarcerated, I'm not sure how we're going
8 to facilitate that, that's not your problem, that's our
9 problem. I'm not sure.

10 Can you in your order permit him to call his pretrial
11 service in Nebraska? If you do that, the ACJ will follow that
12 order, his counselor will allow that to happen.

13 THE COURT: You mean he has to personally call? Can't
14 one of the lawyers call?

15 MR. DeRISO: No. He has to personally call his
16 pretrial/probation.

17 THE COURT: I don't know. How do things work at ACJ?
18 They don't usually do what I ask them to do. Are you allowed
19 to make phone calls there?

20 MR. DeRISO: Through your counselor, yes. I have had
21 clients call me, they go through the counselor, and the
22 counselor allows them to make a phone call. That's the best I
23 can do.

24 THE COURT: So you're asking me to put that in the
25 order?

1 MR. DeRISO: I am, Judge. I'm asking you to direct
2 the ACJ to permit Emmett Freshcorn to call his probation
3 officer in Nebraska. They have to facilitate it.

4 Can we bring him back over here tomorrow, Judge, and
5 make the call through pretrial?

6 MR. LANNI: Before we get through all this, I was
7 instructed by my office to ask for a stay of any release order.
8 So, respectfully, I understand your decision, but before we do
9 everything, I would just want to put that on the record, in
10 case that changes any of making of these plans or anything. We
11 respect your decision, but I was instructed to ask for a stay
12 for one day in order to file a notice of appeal.

13 THE COURT: Okay.

14 Well, I can't order the Allegheny County Jail to do
15 anything, so I will say the Allegheny County Jail is requested
16 to permit defendant to contact his probation officer in
17 Nebraska. I don't know if this will help, but I can put it in
18 here.

19 Mr. Lanni, you're going to file by when?

20 MR. LANNI: I would imagine I would be able to file by
21 the end of the day, but I would ask for a 24-hour stay.

22 If not, then I'll have to have it filed by the end of
23 the day.

24 THE COURT: It's kind of complicated. I have a lot of
25 different things written in here.

1 I am saying at the end, this order is stayed pending
 2 the filing of an appeal by the United States of America until
 3 the end of business on April 4, 2018.

4 MR. LANNI: Thank you, Your Honor.

5 THE COURT: If they don't file an appeal below, I have
 6 noted the marshal is to keep him in custody until he has
 7 obtained placement in a rehab facility approved by pretrial.

8 I want to get this filed so Judge Bissoon knows what I
 9 had in mind when she's considering the appeal.

10 So I'm going to have him sign and I'll sign and we'll
 11 docket this and then we'll see what happens.

12 MR. DeRISO: Thank you, Your Honor.

13 (Court adjourned.)

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15 I-N-D-E-X

16	<u>WITNESS</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
17	William Isbir	2	22	--	32
18	James Smith	33	36	39	--

19

20 CERTIFICATE

21 I, Juliann A. Kienzle, certify that the foregoing is a
 22 correct transcript from the record of proceedings in the
 23 above-titled matter.

24 s/Juliann A. Kienzle, RMR, CRR

25 Juliann A. Kienzle, RMR, CRR